



California Fair Political Practices Commission

August 25, 1987

Kirk Alan Pessner
Nielsen, Merksamer, Hodgson,
Parrinello & Mueller
650 California Street, Suite 2650
San Francisco, CA 94108

Re: Your Request for Advice
Our File No. I-87-174

Dear Mr. Pessner:

You have requested advice concerning the lobbying disclosure provisions of the Political Reform Act.^{1/} Please note that the second conclusion set forth below is different from the telephone advice which is summarized in your letter.

QUESTIONS

1. Is a law firm required to register as a lobbying firm if it receives compensation for the purpose of meeting with agency officials to influence the agency's position on a bill pending before the Legislature?

2. Is a law firm which is registered as a lobbying firm required to amend its registration to include as a lobbyist employer a client who compensates the firm to influence an agency's position on a bill pending before the Legislature?

CONCLUSIONS

1. A law firm is not required to register as a lobbying firm when it receives compensation to influence an agency's position on legislation.

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

Your letter states only a general question. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with immunity provided by an opinion or formal written advice. (Section 84113; Regulation 18329(c)(3).)

2. A law firm which is registered as a lobbying firm must amend its registration to include a client who compensates the firm to influence an agency's position on pending legislation.

ANALYSIS

The Act requires lobbying firms to register and file periodic reports disclosing information about and amounts received from persons who contract with the firm for the purpose of influencing legislative or administrative action. (Sections 86100-86118.) A law firm becomes a lobbying firm when it receives compensation for the purpose of influencing legislative or administrative action and a partner, owner, officer or employee of the firm qualifies as a "lobbyist" under Section 82039 and Regulation 18239. To qualify as a lobbyist, an individual must receive compensation and engage in "direct communication" for the purpose of influencing legislative or administrative action. (Regulation 18239.)

A law firm will also qualify as a lobbying firm if it receives at least \$5,000 in any calendar quarter for the purpose of influencing legislative or administrative action and any partner, owner, officer or employee of the firm engages in "direct communication." (Regulation 18238.5.) "Direct communication" means:

...appearing as a witness before, talking to (either by telephone or in person), corresponding with, or answering questions or inquiries from, any qualifying official, either personally or through an agent who acts under one's direct supervision, control or direction....

(Regulation 18239(d)(3).)

Although the definition of "qualifying official" contained in Regulation 18239 includes appointed, elected or statutory members or directors of state administrative agencies as well as certain staff members of state administrative agencies, the definition of "legislative action" limits direct communication with regard to pending legislation to communications with members or employees of the Legislature:

"Legislative action" means the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his official capacity. "Legislative action" also means the action of the Governor in approving or vetoing any bill.

(Section 82037.)

When a partner, owner, officer or employee of a law firm meets with state agency officials for the purpose of influencing the agency's position on pending legislation, he or she is not engaging in "direct communication." Therefore, a law firm will not qualify as a lobbying firm if its activities are limited to contacting state agency officials with regard to legislation.

However, once a law firm qualifies and is registered as a lobbying firm, any person who makes payments to the firm for the purpose of influencing legislative or administrative action is a lobbyist employer. (Section 82039.5.) "Influencing legislative or administrative action" is defined in Section 82032 as:

...promoting, supporting, influencing, modifying, opposing or delaying any legislative or administrative action by any means, including but not limited to the provision or use of information, statistics or analysis.

(Emphasis added.)

This conclusion is further supported by the Act's definition of "lobbyist employer," which states:

"Lobbyist employer" means any person, other than a lobbying firm, who:

(a) Employs one or more lobbyists for economic consideration, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action, or

(b) Contracts for the services of a lobbying firm for economic consideration, other than reimbursement for reasonable travel expense, for the purpose of influencing legislative or administrative action.

(Section 82039.5.)

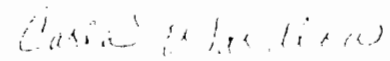
As you can see, while direct communication is necessary in order for a law firm to qualify as a lobbying firm, direct communication is not necessary for a client of a lobbying firm to qualify as a lobbyist employer. In addition, you should note that with regard to your first question, payments made to a law firm which does not qualify as a lobbying firm by a person who is already a lobbyist employer are reportable by the employer if the payments to the law firm are for the purpose of influencing legislative or administrative action. Such payments are reported as "Other Payments to Influence Legislative or Administrative Action" in Part III, D of the Form 635.

Kirk Alan Pessner
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Please do not hesitate to contact me if you have additional questions.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script, appearing to read "Carla Wardlow".

By: Carla Wardlow
Political Reform Consultant

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JUL 23 6 19 AM '87 FILE NUMBER

July 21, 1987

Ms. Carla Wardlow
Fair Political Practices Commission
Post Office Box 807
Sacramento, California 95804-0807

Re: Activities Considered Influencing
Legislative or Administrative Action

Dear Carla:

In our conversation of Monday, July 20, 1987, I provided a factual scenario and questions regarding lobbying registration activity and you were kind enough to provide advice on that factual scenario over the telephone. Let me reiterate the facts and the questions and what I believed to be your responses. If the responses are accurate, please sign this letter and return it to me in the enclosed envelope provided.

FACTUAL SITUATION #1

I indicated that a company had hired a law firm, which does not employ a registered lobbyist and does not qualify as a lobbying firm, to meet with an agency official to attempt to change the agency's position on a bill in the Legislature. The scope of the law firm's engagement does not go beyond the contact with the agency and specifically does not include any communication with the Legislature on the bill.

The company, which hired the law firm, may, independent of any engagement with the law firm, lobby the Legislature or hire lobby firms to lobby Legislature in favor of its bill.

QUESTIONS

1. Does the attorney who meets with the agency official consider that meeting "a contact" for the purposes of becoming a registered lobbyist?
2. Does the law firm become a lobbying firm?

ANSWERS

You advised me that such activity by the attorney would not constitute a "contact" because it is not direct communication to influence legislative action since the communication is to an agency official who cannot make the decision on the legislative bill.

You further advised me that receiving compensation for having a meeting to try to change an agency's position on legislative action would not constitute an attempt to influence legislative action by the law firm on behalf of its client and (providing all other lobby firm threshold criterias are met), would not make the law firm a lobbying firm.

FACTUAL SITUATION #2

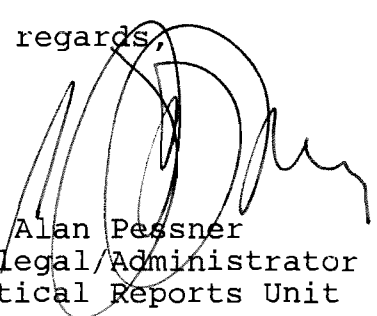
I then asked you if your answer would be different if the company had come to a law firm which is a lobbying firm for the same purpose. The attorney handling the matter is not a registered lobbyist.

ANSWER

You advised me that the fact that the law firm is a lobbying firm would not change the answer and specifically would not require the registration of the company as a lobbying firm client nor would it count as a contact for a nonlobbyist attorney.

Thank you for your advice in this matter.

Kind regards,



Kirk Alan Pessner
Paralegal/Administrator
Political Reports Unit

KAP:ryb

Carla Wardlow

Date: _____



California Fair Political Practices Commission

July 28, 1987

Kirk Allen Pessner
Nielsen, Merksamer, Hodgson,
Parrinello & Mueller
650 California Street, Suite 2650
San Francisco, CA 94108

Re: 87-174

Dear Mr. Pessner:

Your letter requesting advice under the Political Reform Act was received on July 24, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:jaj